

REMARKS

The remainder of this Reply is set forth under appropriate subheadings for the convenience of the Examiner.

Rejection of Claims 30-46 under 35 U.S.C. § 103(a)

Applicants note that the Examiner quoted “Claim Rejections-35 U.S.C. § 103,” and yet stated that Claims 30-46 are rejected under “35 U.S.C. § 102(e)” as being unpatentable over U.S. Patent No. 6,408,403 to Rodrigues, *et al.* (hereinafter “Rodrigues”) in view of U. S. Patent No. 5,754,760 to Warfield (hereinafter “Warfield”). Applicants also note that the Examiner stated that “Rodrigues fails to explicitly disclose the step of generating a script from the captured application” at page 2 of the Office Action. Thus, Applicants assume that Claims 30-46 have been rejected under 35 U.S.C. § 103(a), and that the rejection of these claims under 35 U.S.C. § 102(e) made previously was withdrawn, because Rodrigues does not teach all the elements of Claims 30-46, as acknowledged by the Examiner.

In particular, the Examiner asserted that although Rodrigues fails to explicitly disclose the step of generating a script from the captured application, it would have been obvious to a person of ordinary skill in the art to modify an automated software testing of Rodrigues by including the limitation of generating a best test script as taught by Warfield. Applicants respectfully disagree for the reasons set forth below.

First of all, Examiner’s reliance on Warfield to remedy the deficiencies of Rodrigues is in error, because Warfield is not prior art against the instant application. The instant application claims priority to U.S. Patent Application No. 08/577,278 filed on December 22, 1995, which is now U.S. Patent No. 6,167,534 which claims the benefit of U.S. Provisional Application No. 60/007,590 filed on November 24, 1995. The instant Claims 30-46 are fully supported by the priority documents, U.S. Provisional Application No. 60/007,590 (see, for example, page 2, lines 20-28, page 3, line 20 through page 4, line 19 and Figures 1-3) and U.S. Patent No. 6,167,534 (see, for example, Abstract, Column 1, line 55 through Column 2, line 43 and Figures 1-15). Thus, Applicants’ priority claim predates Warfield, filed on May 30, 1996 and patented on May 19, 1998.

In addition, teachings of the primary reference, Rodrigues, are directed to a fundamentally different testing method of a software application from the applicants' invention of Claims 30-46, not to mention that Rodrigues fails to disclose generating a script from the captured application calls to emulate a user. Accordingly, Rodrigues does not disclose or suggest the claim elements of base Claims 30 and 40 of the instant application, as discussed below in detail.

Applicants' invention of Claims 30-39 and 40-46 is directed to a method of producing scripts and a computer program product that produces scripts, respectively, *for load testing* a software application. That is, as described at page 4, line 29 through page 5, line 8 of the instant application, Applicants' invention is for analyzing the *effect of many users* on a system, e.g., on a networking operating system. For example, Applicants' invention can provide a method for predicting and measuring an application's behavior and performance under the stress of a multiple user load *by emulating multiple users* accessing the application at the same time. Therefore, in the method of the invention, the users themselves are not directly involved in the load testing. Rather, activities of the individual users, including, e.g., application calls and timing information of the calls, such as response time of the application to the calls, including any time delay caused by the users and/or computers used by the users and any time delay caused by the server-side of the application, are captured in scripts (see the specification of the instant application, for example, page 7, line 27-37 and page 8, lines 19-34). The scripts are then used to emulate such users for load testing the software application.

In contrast, there is no disclosure or suggestion in Rodrigues of *load testing* a software application, i.e., testing the software product's behavior and performance under the stress of a multiple user load *by emulating multiple users* accessing the application at the same time. Rodrigues discloses rather *verification, regression and functionality testing* a software product in which the test operations are integrated into the structure of the software product, as described, for example, at Column 8, line 63 through Column 9, line 4 and Column 9, lines 15-20 and in Figure 2. Also, the method of Rodrigues does not require emulating a user on a computer system. In particular, the method of Rodrigues does not employ a script to emulate a user for the testing. Rather, because the test operations are integrated into the structure of the software product, the method of Rodrigues allows an actual user himself/herself directly to be involved in the testing by, e.g., providing weighting values to increase the frequency of certain groups of

tests being selected as compared to other groups of tests (see, for example, Column 10, lines 48-52).

Thus, the testing method of Rodrigues is a fundamentally different testing method of a software application from that of the instant application.

Further, there is no disclosure or suggestion in Rodrigues of certain claim elements of base Claims 30 and 40 of the instant application.

As discussed above, Rodrigues does not disclose or suggest *load testing* a software application. There also is no disclosure or suggestion in Rodrigues of the step of capturing calls or computer code that captures calls, on a computer system *to emulate a user*, as claimed in base Claims 30 and 40. As discussed above, the tool or method of Rodrigues does not utilize an emulated user.

Also, there is no disclosure or suggestion in Rodrigues of the step of recording or computer code that records, *timing information of the captured calls*, e.g., a response time of an application to the calls, as claimed in base Claims 30 and 40. The section, Column 9, lines 13-20, of Rodrigues cited by the Examiner discusses *timing of a testing itself*, i.e., when the testing can be performed, but not timing information of the captured calls on a computer system, e.g., a response time of an application to the calls, which can be used for generating a script that is later ultimately used for emulating a user for load test.

In addition, there is no disclosure or suggestion in Rodrigues of *generating a script* from the captured application calls or computer code that *generates a script* from the captured application calls, *according to the timing information of the captured calls to emulate the user*, as claimed in base Claims 30 and 40. As discussed above, the secondary reference, Warfield, does not remedy the deficiencies of Rodrigues because Warfield is not a prior art against the instant application.

In summary, Warfield is not prior art against the instant application, and Rodrigues does not disclose or suggest the claim elements of instant base Claims 30 and 40. Claims 31-39 and 41-46 depend from base Claims 30 and 40, respectively. Therefore, the subject matter of Claims 30-46 is not obvious in view of any combination of these references. Reconsideration and withdrawal of the rejection are respectfully requested.

CONCLUSION

In view of the above remarks, it is believed that all pending claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.

By Mary Lou Wakimura
Mary Lou Wakimura
Registration No. 31,804
Telephone: (978) 341-0036
Facsimile: (978) 341-0136

Concord, MA 01742-9133

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